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TRUSTS—CHARITIES—*Cy PRESS* DOCTRINE.—Funds were subscribed to trustees for the purpose of purchasing a certain site for a public school. After such subscriptions were made, the original plans for executing the trust proved impracticable. *Held*, the trust can be executed *cy pres*, and the original subscribers are bound by the newly adopted plan. *Richards et al. v. Wilson et al.* (Ind.), 112 N. E. 780. See NOTES, p. 224.

TRUSTS—CONSTRUCTION—RELIGIOUS SOCIETIES.—A deed made to trustees of church property recited that it was purchased to “erect a parsonage upon, etc.” A parsonage was erected on the land, and later permission was also granted by the quarterly conference to build a church on a part of the land. This action was brought by one of the trustees to prevent the building of a church on the land. *Held*, the language in the deed does not create a trust or condition subsequent, forbidding the use of the land as a site for the church. *Sanders v. Meredith et al.* (W. Va.), 89 S. E. 733.

Conditions subsequent are not favored in the law. 2 CO. LITT. 205b; 4 KENT COM. 129; 1 MINOR, REAL. PROP., § 528; *Merrifield v. Cobleigh*, 4 CUSH. (Mass.) 178. Hence, a deed will not be construed to create an estate on condition unless language is used which according to the rules of law, *ex proprio vigore*, imports a condition, or the intent of the grantor to make a conditional estate is otherwise clearly and unequivocally indicated. *Rawson v. Uxbridge*, 7 ALLEN (Mass.) 125. Merely putting in a deed a clause declaring the purpose for which the grantor intends the premises are to be used does not create a condition subsequent, if there are no words which show that the grant is to be void if the purpose is not fulfilled. *Ayer v. Emery*, 14 ALLEN (Mass.), 67; *Brown v. Caldwell*, 23 W. Va. 187, 48 Am. Rep. 376. Thus, a devise of real estate to a religious corporation “to be used as a parsonage and used for nothing else” does not create a condition subsequent. *Adams v. First Baptist Church*, 148 Mich. 140, 111 N. W. 757, 11 L. R. A. (N. S.) 509. It would, therefore, seem clear that the words used in the deed considered in the principal case do not create a condition subsequent.

But the difference between a conveyance of real estate on condition subsequent, and upon trust to be devoted to a particular and restricted use, is very material. A broken condition forfeits the estate, while limitations, if simply to guide trustees and explanatory of the terms upon which the grant is made, create a trust. *Stanley v. Colt*, 5 Wall. 119. The non-performance of a trust will not forfeit the estate, but performance of it will be required by courts of equity. *Barr v. Weld*, 24 Pa. 84; *Stanley v. Colt*, *supra*. And it is fully established that where property is acquired for the benefit of a religious or charitable institution, there can be no diversion to an inconsistent use. *Franke v. Mann*, 106 Wis. 118, 81 N. W. 1014, 48 L. R. A. 856. See *Fadness v. Braunborg*, 73 Wis. 257, 41 N. W. 84. So, where property is purchased for a church, the trustees cannot lease a part of it for a day school with leave to make certain changes to suit the purposes of the lessee. *Perry v. McEwen*, 22 Ind. 440. Each member of the organization has a property right in the subject matter of the trust, and any member or number of members who

have been aggrieved by the use to which the property has been put may apply to the courts for the protection of their rights. *Beatty v. Kurtz*, 2 Pet. 566; *Nash v. Sutton*, 117 N. C. 231, 23 S. E. 178; *Mannix v. Purcell*, 46 Ohio St. 102, 19 N. E. 572, 2 L. R. A. 753; *Berryman v. Reese*, 50 Ky. 287. Accordingly, it will be noted that the courts will rarely allow any change or material diversion from the specified use of the trust; but in the principal case, the use to which the property was put seems to have been so consistent with the general purposes of the trust that it can hardly be said to have constituted a diversion.